

incorporated in the impugned order. I am also not impressed by the argument of Mr. Sindhu that the petitioner could be removed under the doctrine of pleasure as incorporated under Article 31(4). This Article empowers the respondent-Company to remove a Director, subject to the provisions of the Act and the Act means the Companies Act, 1956. In view of the interpretation clause in the Articles and Memorandum of Association for removal of a Director, procedure under Article 284 of the Companies Act, 1956 has been prescribed. Admittedly, no such procedure has been adopted. The judgment of the Hon'ble Apex Court in the case of of **Dr. L.P. Agarwal** (*supra*) fully covers the case of the petitioner.

(14) This writ petition accordingly succeeds and the impugned orders dated 27th December, 1999 (Annexure P-4) and dated 29th December, 1999 (Annexure P-5) are hereby quashed. Consequently, the petitioner is deemed to be in service as Director (Administration) for a period of two years from the date of his appointment i.e. 2nd April, 1999 till 1st April, 2001 and he shall be entitled to all his emoluments and other consequential benefits.

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**R.N.R.**

***Before Uma Nath Singh and A.N. Jindal, JJ.***

**LAKHBIR KAUR,—Appellant**

***versus***

**STATE OF PUNJAB,—Respondent**

Criminal Appeal No. 398/DB of 2005,  
Criminal Appeal No. 420/DB of 2005 &  
Criminal Appeal No. 478/DB of 2005

27th April, 2007

***Indian Penal Code, 1860—Ss. 302/34—Death of a medical practitioner due to head injury—Deceased owned car in which he was taken by accused/driver for attending social function at the place of relative of the other accused—Alcohol detected in urine and blood of both accused—Driver projecting death in road accident—***

***Deceased remained in company of driver—Driver failed to explain as to when he parted company of deceased—Consistent opinion can be formed that it was driver who consumed liquor with deceased, caused injuries to him resulting into death and he got deceased admitted in hospital—Appeal of driver liable to be dismissed—However, in absence of any evidence it cannot be said that other two accused also participated in crime—Their appeals accepted and they directed to be released forthwith.***

*Held*, that sufficient evidence has been led to establish that the deceased went in the company of the accused and there is no evidence on the record that the accused Ashwani Kumar Sharma ever parted the company of the deceased or that deceased knew to drive the car. Though no time can be ascertained as to when the accused committed the murder of the deceased, yet the accused has also failed to explain as to when he parted the company of the deceased.

(Para 32)

*Further held*, that the conduct of the accused Ashwani Kumar Sharma leads us to strike a needle of guilt against him and consistent opinion can be formed that it was the accused Ashwani Kumar Sharma who consumed liquor with the deceased and thereafter caused injuries to him resulting into his death and then he got him (deceased) admitted in the hospital projecting that it was the case of accident.

(Para 32)

*Further held*, that as regards lack of motive, we refrain from commenting anything as to who was behind the murder as two other accused persons namely Ravinder Singh *alias* Pahara and Lakhbir Kaur were also involved in this case but without commenting over their involvement in the commission of the crime, it would be suffice to say that Ashwani Kumar Sharma accused was the perpetrator of the crime.

(Para 33)

*Further held*, that no motive for committing crime by Ravinder Singh *alias* Pahara has been alleged or proved on the record. It is also

not proved on the record that it was only Ravinder Singh *alias* Pahara who was with Ashwani Kumar Sharma and the deceased and none else. Consumption of liquor by Ravinder Singh *alias* Pahara has been duly proved by stating that he is habitual drunker and he was taken by the police when he was under the influence of liquor. Furthermore, in the absence of any direct connection between Ravinder Singh *alias* Pahara and Pooja Sharma and any other witness who had seen Ravinder Singh *alias* Pahara in the company of the deceased, it cannot be taken as an incriminating circumstance that it was Ravinder Singh *alias* Pahara who had participated in the commission of the crime.

(Para 34)

*Further held*, that no amount of evidence has been led by the prosecution that Lakhbir Kaur accused had any relations with Ravinder Singh *alias* Pahara. In that situation, the complicity of the accused Lakhbir Kaur in the commission of the crime is not probable. We may condemn the Investigating Agency for which it deserves for not conducting the investigation in the right perspective, yet we also cannot condemn Lakhbir Kaur without evidence on record. The documents proved by Lakhbir Kaur on the record rather go to show that she was in no way involved in the crime.

(Para 35)

Mrs. Baljeet Kaur Mann, Advocate, *for the appellant* in  
Crl. A. No. 398-DB of 2005

K. S. Ahluwalia, Sr. Advocate with Ms. Anju Sharma,  
Advocate, *for the appellant* in Crl. A. No. 420-DB of 2005

Baldev Singh, Sr. Advocate with Sudhir Sharma, Advocate  
*for the appellant* in Crl. A. No. 478-DB of 2005

Ms. Reeta Kohli, DAG, Punjab, *for the respondent*.

**A. N. JINDAL, J.**

(1) The three Criminal Appeals No. 398-DB of 2005 filed by accused-appellant Lakhbir Kaur, Criminal Appeal No. 420-DB of 2005 filed by the accused-appellant Ashwani Kumar Sharma and Criminal Appeal

No. 478-DB of 2005 filed by the accused-appellant Ravinder Singh, having been arisen out of the same judgment dated 19th May, 2005, passed by the learned Sessions Judge, Hoshiarpur, are being decided together.

(2) Homicidal death of Sham Sunder Sharma, a Dentist Registered (Medical Practitioner), on 16th November, 2003, at about 6.30 P.M. in the area of Village Ram Garh Kullian, Police Station Mukerian, led to the prosecution of accused-appellants Ravinder Singh *alias* Pahara, Ashwani Kumar Sharma and one Lakhbir Kaur (hereinafter referred to as 'the accused'), under Section 302/34 IPC. Consequently, they were convicted for the aforesaid offence and were sentenced to undergo life imprisonment each.

(3) Sham Sunder Sharma was a Registered Medical Practitioner and running his dental clinic in the main bazar, Mukerian. Lakhbir Kaur accused had been working as servant at his clinic for some time. Ravinder Singh *alias* Pahara accused was the friend and Ashwani Kumar Sharma was the driver of his car bearing registration No. DL32Q-0860.

(4) On 16th November, 2003, at about 8.00 A.M., he received a telephonic message from Ravinder Singh *alias* Pahara accused that he wanted to accompany him to Jalandhar in order to attend a function to be celebrated in the relationship of Ravinder Singh *alias* Pahara. Pooja Sharma complainant further disclosed in her statement recorded on 16th November, 2003 at about 9.50 P.M. that at about 10.00 A.M., Ashwani Kumar Sharma took her husband in their aforesaid car for the destination. First of all they went to the village Ram Garh Kullian as per telephonic message and after picking Ravinder Singh *alias* Pahara from Ram Garh Kullian, they went to Jalandhar for attending the function. In the day, she received 3-4 telephonic calls from her husband enquiring about the working of the shop. In the evening, at about 4.00 P.M., when she rang up on the mobile phone of her husband, it was not respondent by him. At about 7.00 P.M., Ashwani Kumar Sharma came to her house and informed that Sham Sunder Sharma had met with an accident and was lying admitted in the Civil Hospital, Mukerian. At this, she along with her two daughters and son Ajay Sharma rushed to Civil Hospital, Mukerian by the same car, where she found her husband lying dead in the emergency ward of the hospital. She called her relatives while gazing at the dead body, she saw that blood had oozed out

of his nose and there was no visible injury. The coat which was smeared with blood was lying removed and little part of it was entangled with his arm. At that time, she also came to know that Ravinder Singh *alias* Pahara accused after beating her husband had pushed him out of the car, as a sequel of which he received invisible injury on his head, due to which he died. While explaining motive, she disclosed that Lakhbir Kaur accused, a resident of Ramdaspur, police Station Gardhiwala, had earlier been working at their clinic. She had got issued passport by making mention of her husband as her own husband and on the promise that she could arrange for sponsorship from abroad and she (Lakhbir Kaur) promised her husband to take him to England. After contracting second marriage, she left the job and started black mailing her husband by demanding ransom. She in connivance with Ravinder Singh *alias* Pahara moved number of applications against her husband and an enquiry was also conducted by DSP, Headquarters. Consequently, Lakhbir Kaur accused in conspiracy with Ravinder Singh *alias* Pahara and Ashwani Kumar Sharma, their driver, had murdered Sham Sunder Sharma.

(5) On the basis of the aforesaid statement made by the complainant on 16th November, 2003, at about 9.50 P.M., recorded by S.I. Onkar Dutt, an FIR No. 170 was recorded at about 10.05 P.M. on the same day. Special report was received by learned Sub-Divisional Magistrate (Duty), on 17th November, 2003 at about 2.00 A.M. S.I. Onkar Dutt, handled the investigation, visited the place of occurrence, prepared the rough site plan Ex. PR of the place where the dead body was lying in the mortuary and rough site plan Ex. PS of the place where the car bearing registration No. DL32Q-0860 was lying parked was also prepared. He took into possession RC along with DL of Sham Sunder Sharma; and the passports of Ajay Sharma and Lakhbir Kaur Ex. P2 & Ex. P3 respectively ; pair of sandals (ladies) Ex. P4&Ex.P5; pair of Gurgabi (Gents) Ex. P6 and Ex. P7; one rexene bag (ladies) Ex. P8 and CD cassette Ex. P9 from the aforesaid car,—*vide* memo Ex. PT. He also prepared inquest report Ex. PG; recorded statements of the witnesses ; and prepared rough site plan Ex. PU of the place of occurrence. On 17th November, 2003, he arrested Ravinder Singh *alias* Pahara and Ashwani Kumar Sharma accused. On completion of the investigation, challan was presented against the accused.

(6) Consequently, the accused were charged under Section 302/34 IPC to which they pleaded not guilty and claimed trial.

(7) On commencement of trial, the prosecution examined Pooja Sharma, complainant (PW1) who reiterated all the allegations as contained in the FIR.

(8) Dr. Shivinder Singh Mathon, SMO, Civil Hospital, Mukerian (PW2) who had received the dead body as brought by Ashwani Kumar Sharma had sent the report Ex. PB to the police station.

(9) Dr. Prem Kumar, Medical Officer, Civil Hospital, Mukerian (PW3), being the member of Board of Doctors, conducted post mortem examination on the dead body of the deceased. He deposed that the dead body was identified by Vijay Kumar son of late Des Raj Sharma and Ajay Kumar son of Sham Sunder Sharma. He observed that the length of the body was 5'7", well nourished and well built. Along with the dead body, a pant, a black belt, white socks and black coat was also brought. Rigormortis was found present over the dead body. There was bleeding from the nose and the ear. He found the following injuries on his person :—

1. Lacerated wound 1.5 cms x.5 cm on the lateral end of the right eye brow.
2. Lacerated wound 1 × .25 cms on the medial end of right eye brow and on dissection underlying bone intact.
3. There was bony deformity at the level of nipple on both sides of the chest with bony crepitus present on both sides of the chest at the level of 3, 4, 5 ribs on both sides on dissection the left cavity of the chest was full of blood and fluid with laceration of left lung. Right lung was healthy.
4. Lacerated wound 3× 1 cms on the right leg upper third on the anterior aspect, 3cms below the tibia tuberosity. On dissection underlying bone was found intact.
5. Lacerated wound 3×2 cms on the medical aspect of left knee joint. All the organs were healthy.

(10) He further deposed that stomach and its contents, large intestines, part of the liver, spleen, half of each kidney, sample of blood and sample of saline solution were sent for chemical examination. He deferred his opinion about the cause of death till the report of the Chemical Examiner. He proved his report Ex. PC. After receipt of report of Chemical Examiner Ex. PE. Death according to him was due to the laceration of the lung of the left side (vital organ) as a result of injury No. 3, exaggerated by cumulative effect of alcohol and chlorocompound, group of insecticides were also detected, which were sufficient to cause death in the ordinary course of nature. He further opined that the possibility of the injuries having been received by the deceased during scuffle could not be ruled out. All the injuries were found to be anti-mortem in nature. On the same day i.e. 17th November, 2003, at about 10 A.M. He medico-legally examined Ravinder Singh *alias* Pahara as brought by HC, Vinod Kumar, and observed as under :—

“BP was 140/80 mm, pulse 78 per minute. Patient smelt of alcohol and was not under the influence of alcohol. The patient could not walk on the straight line, staggering gait forth, stammering speech, fine movements impaired. Finger nose i.e. overshooting of the finger. ....”

(11) He took samples of urine and blood and sent the same to the office of Chemical Examiner. He proved the MLR Ex. PJ.

(12) On the same day he examined Ashwani Kumar accused, at about 10.25 A.M. and observed and under :—

“The general condition was good, he was fully conscious, well oriented to place time and person, BP was 120/76 mm, pulse 76 per minute, lacerated wound 2 cms × .25 cm over the forehead. Clotted blood was present on the wound on the left side of the eye brow 3 cms from the left eye brow, he (patient) could not walk on the straight line, staggering gait ; he (patient) smells of alcohol, stammering speech incoherent fine movement impaire ; finder nose test, over shooting of the finger...”

(13) Urine and blood samples were sent to the office of Chemical Examiner, Patiala. Injury No. 2 was declared as simple and duration of the

injury was given as 24 hours. The weapon used for causing injuries was blunt. He proved the MLR Ex. PK. He also proved the report of the Chemical Examiner Ex. PL in respect of Ravinder Singh *alias* Pahara accused and Ex. PM in respect of Ashwani Kumar Sharma accused. As per these reports alcohol was detected in the urine and blood of both the accused persons. The doctor also opined that injury No. 2 on the person of Ashwani Kumar Sharma accused having been received during scuffle could not be ruled out.

(14) SI, Onkar Dutt (PW7) proved the rough site plan Ex. PU. Birbal, Assistant, Regional Passport Office, Jalandhar (PW8) proved the passports issued in the name of Lakhbir Kaur accused and Ajay Kumar Sharma, son of Sham Sunder Sharma (deceased).

(15) Surinder Kumar, Draftsman (PW9) proved the site plant Ex. PV.

(16) ASI Baldev Singh (PW4), HC Satwinder Singh (PW5) and Constable, Ravinder Singh (PW6) are the formal witnesses.

(17) When examined under Section 313 Cr. P.C. while denying all the incriminating circumstances appearing against them, they pleaded their false implication. Accused Ravinder Singh *alias* Pahara further explained that he never invited or accompanied the deceased to the marriage ceremony nor any such marriage was there. He had no ill will or malice against the doctor and had no connection with Lakhbir Kaur. He is running a furniture show room at Mukerian. He was used to heavy drinking habit and under the influence of liquor he was taken away by the police of Mukerian and later on he has been falsely implicated in this case. No occurrence took place at bus stand of village Aima Mangat. Complainant raised suspicion against him under misguided impression on tutoring of some opponents in Mukerian.

(18) Accused Ashwani Kumar Sharma further explained that he never worked as driver with the deceased on the day of occurrence. Neither he took his car to Jalandhar nor was there any such function. He has been working as a freelance driver at Taxi Stand, Mukerian and once or twice Dr. Sham Sunder had engaged his services for a day or so but he was neither engaged for the purpose on the day of occurrence nor he accompanied the



deceased or Ravinder Singh alias Pahara to any place. He has been falsely implicated in this case on suspicion.

(19) Lakhbir Kaur accused pleaded that she was unmarried. While claiming employment with the deceased from 1995 to 2000. She pleaded that the deceased was in arrears of her salary to the tune of Rs. 4 lacs, therefore, she moved application to SSP, Hoshiarpur which was enquired into by the DSP, Mandip Singh. The deceased during her employment with him took signatures on the passport form and by misusing the same got issued the passport. She has been looking after the hospital and used to submit the details in the evening some time to the deceased or some times to the complainant. She was staying in the accommodation provided to her during her employment. She had no connection or relations with the other two accused also. Complainant has named her to escape from the liability of payment of arrears of salary.

(20) During defence, the accused examined DSP, Ram Parkash (DW1) to confirm that accused Lakhbir Kaur was found innocent. DSP, Mandip Singh (DW2) was examined in order to prove that Lakhbir Kaur accused moved application against the deceased and ultimately it was compromised on 15th November, 2003. Des Raj (DW3) and Tarsem Singh (DW4) were also examined by the accused in their defence.

(21) On scrutiny of the evidence, the trial Court while believing the prosecution version observed that all the accused in conspiracy with each other beat the deceased to death. Consequently, they were convicted and sentenced. Hence these appeals.

(22) We have heard Ms. Baljeet Kaur Mann, Advocate, Mr. K.S. Ahluwalia, Sr. Advocate, Mr. Baldev Singh, Sr. Advocate with Mr. Sudhir Sharma, Advocate, for the appellants, Ms. Reeta Kohli, learned Deputy Advocate General, Punjab and perused the records of this case with their able assistance.

(23) Out of three accused, Ravinder Singh *alias* Pahara is stated to be the friend of the deceased, Ashwani Kumar Sharma accused to be the driver and Lakhbir Kaur accused to be the ex-employee of Sham Sunder Sharma (deceased). The undisputed facts prevailing over the case are that the deceased died on the evening of 16th November, 2003 and

was got admitted in the Civil Hospital, Mukerian on the same day at about 6.45 PM by Ashwani Kumar accused. Dr. Shivinder Singh Mathon (PW2) disclosed this fact that Ashwani Kumar Sharma accused son of Balraj Sharma had brought his dead body and he informed that Sham Sunder Sharma had died on account of accident. It is amply established that the deceased owned car bearing registration No. DL32Q-0860 in which he was taken by Ashwani Kumar Sharma accused in the morning of 16th November, 2003 for attending function at Jalandhar in the relations of Ravinder Singh *alias* Pahara accused. It is established from the statement of the complainant Pooja Sharma (PW1) that the accused Ashwani Kumar Sharma while projecting the death of Sham Sunder in a road accident disclosed that he was lying admitted in the Civil Hospital, Mukerian. She further disclosed in her testimony that she had received telephone calls up to 4.00 PM and thereafter calls made by her were not responded by her husband.

(24) The medical examination of Ravinder Singh *alias* Pahara and Ashwani Kumar Sharma, driver at 10-00 AM and 10-25 AM respectively also reveals that they had consumed liquor. Pooja Sharma (PW1) in her substantive statement disclosed that her husband had conveyed to her that he was in the company of Ravinder Singh *alias* Pahara. The evidence against Lakhbir Kaur accused is that she had earlier been the servant of the deceased. She was working in the clinic of the deceased as an employee. She got prepared passport in her name representing herself to be the wife of the deceased. She had also dispute with the deceased over the payment of salary, enquiry with regard to which was pending with Mr. Mandip Singh, DSP and she had sought time from the said DSP to compromise the matter up to 15th November, 2003, whereas Sham Sunder Sharma died on 16th November, 2003.

(25) Except the testimony of the complainant Pooja Sharma (PW1) her testimony cannot be ignored merely on the ground that she was the relative of the deceased. She had no axe to grind against the accused and was not to be benefitted by substituting the person in place of real culprit. She having been living in the house was supposed to know about the affairs going on in the family, therefore, she rightly said that Ashwani Kumar Sharma was their driver and he had taken her husband from the house on their Lancer car on the morning of 16th November, 2003; it was

he who informed her about the casualty of her husband and she rushed to the hospital in the same car and car was not having any effect of accident.

(26) On scrutiny of the entire evidence, we have no reason to discard her statement especially when her testimony could not be shattered or discredited despite scorching cross-examination conducted upon her. Keeping in mind that the case is not based on direct evidence and that in order to bring home the guilt on the basis of the circumstantial evidence, the circumstances must be of definite and conclusive nature and these should be fully proved on the record and all the facts so established should be consistent only with the hypothesis of the guilt of the accused and inconsistent with his innocence. All the circumstances should be of moral certainty so as to exclude the possibility of the guilt of any person than the accused, we are convinced to hold that prosecution has stood test of time.

(27) We will take up the case of each accused separately.

(28) As regards Ashwani Kumar Sharma accused, it has come in the testimony of Pooja Sharma (PW1) that he was got employed by her husband through Ravinder Singh *alias* Pahara, his friend, 10-15 days prior to the occurrence. Nevertheless, Pooja Sharma (PW1) categorically stated that he had taken her husband in their car bearing registration No. DL32Q-0860 to Jalandhar in order to attend some function. There is also a definite evidence that he got admitted the deceased in the hospital and informed the complainant about the casualty. Testimony of Dr. Shivinder Singh Mathon cannot be brushed aside who categorically stated that the deceased was brought by Ashwani Kumar Sharma accused in the hospital. As per deposition of Dr. Prem Kumar (PW3), Sham Sunder Sharma died a homicidal death and was not the result of the accident as posed by the accused Ashwani Kumar Sharma before him. Chlorocompound along with alcohol found in the viscera was not the cause of death but the head injury on the person of Sham Sunder Sharma was the cause of his death. Ashwani Kumar Sharma accused had also consumed liquor as confirmed by the medical evidence. It is a matter of common experience that he on account of fear psychosis continued taking liquor after committing murder of the deceased. When once it is proved that Ashwani Kumar Sharma accused had taken the deceased along with him in the car, the was hail and hearty but he brought him dead in the hospital. During the period the deceased

remained in his company, what happened to him was in his personal knowledge and he was to explain his death.

(29) Section 101 of Evidence Act provides that the burden of proving the fact which is in the personal knowledge of a person lays upon him who knows it but Section 106 of the Act is an exception to the aforesaid section. However, this section is certainly not intended to relieve the prosecution from its duty to prove its case but at the same time this section indicates that exceptional cases in which it would be impossible or disproportionately difficult for the prosecution to establish the fact which was especially within the knowledge of the accused and which he could prove without difficulty or inconvenience. The burden to prove those facts lays upon the accused.

(30) The Apex Court in number of cases i.e. **State of West Bengal versus Mir Mohammad Omar (1)**, **Ram Gulam Choudhary versus State of Bihar (2)** **Sahadevan versus State (3)** and **Hira Lal versus State (Government of NCT) Delhi (4)** framed the following guidelines while elaborating the rights and duties of the prosecution when the facts are especially within the knowledge of the accused :—

- “(i) It has been obligatory on the part of the accused to satisfy the Court as to how, where and in what manner the deceased parted company with them. The principle behind it is that if person is last seen in the company of another, then the person with whom he was last seen has to explain the circumstances in which he parted company.
- (ii) The subsequent conduct i.e. absconding of the accused lends assurance to the homicide theory. This absconding factor can be used for cementing the prosecution case.
- (iii) Incriminating links of facts should have been explained only by the accused and nobody else as they were exclusively within the knowledge of the accused.

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(1) 2000 CrI. L.J. 4047

(2) 2001 CrI. L.J. 4632

(3) 2003 SCC (CrI.) 382

(4) 2003 CrI. L.J. 3711

- (iv) Even though-Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused, but the section would apply to cases like the present, where the prosecution has succeeded in proving the facts from which a reasonable inference can be drawn regarding death, the accused persons having special knowledge must offer an explanation which might lead the Court to draw a different inference.
- (v) When it is proved to the satisfaction of the Court that the victim was abducted by the accused persons and they took him out of the area, the accused alone knew what happened to him until he was with them. If he is found murdered within a short time after the abduction, the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him unless the accused have some reasonable explanation to make as to what else happened to the victim during the period he remained in their custody.”

(31) The golden thread running through the aforesaid guidelines is only one that when once it is established on the record that person was last seen in the company of the accused and the murder is committed within short time thereafter, then the irresistible presumption which can be drawn is that the accused had murdered the deceased in the absence of any plausible explanation.

(32) Here in this case also, sufficient evidence has been led to establish that the deceased went in the company of the accused and there is no evidence on the record that the accused Ashwani Kumar Sharma ever parted the company of the deceased or that deceased knew to drive the car. Though no time can be ascertained as to when the accused committed the murder of the deceased, yet the accused has also failed to explain as to when he parted the company of the deceased. The conduct of the accused is also indicative of the fact and speaks volumes that he is the perpetrator of the crime. The accused in his statement under Section 313 Cr. P.C. has made a blatant denial about the fact even with regard to taking the deceased in the car or bringing him in the hospital in an injured condition. He has not furnished any explanation as to how the alcohol was detected

in his urine and blood by the Chemical Examiner. He has also made false explanation before the doctor that it was a case of accident as Dr. Prem Kumar (PW3) has not formed any such opinion. Similarly, had it been the case of accident, then the car bearing registration No. DL32Q-0860, which he was driving, must have suffered damage but it has come in evidence of Pooja Sharma (PW1) that the car was under same condition without any scratch over it. He has also denied if he was driver of the deceased, whereas it is abundantly clear from the statement of Pooja Sharma (PW1) that Ashwani Kumar Sharma was employed as driver by her husband 10—15 days prior to his death. Thus, the conduct of the accused leads us to strike a needle of guilt against him and consistent opinion can be formed that it was the accused Ashwani Kumar Sharma who consumed liquor with the deceased and thereafter caused injuries to him resulting into his death and then he got him (deceased) admitted in the hospital projecting that it was the case of accident.

(33) As regards lack of motive, we refrain from commenting anything as to who was behind the murder as two other accused persons namely Ravinder Singh *alias* Pahara and Lakhbir Kaur were also involved in this case but without commenting over their involvement in the commission of the crime, it would be suffice to say that Ashwani Kumar Sharma accused was the perpetrator of the crime.

(34) As regards Ravinder Singh *alias* Pahara accused, only evidence with us is that (i) phone was received by the deceased ; (ii) deceased made phone calls in the afternoon that he was with Ravinder Singh *alias* Pahara accused ; and (iii) on medical examination on 17th November, 2003, he was found to have consumed liquor, but these circumstances are hardly sufficient to bring him in the net. The suspicion howsoever grave may be cannot take place of proof. It was only the deceased who had heard about the phone of Ravinder Singh *alias* Pahara and not Pooja Sharma complainant. Be that it may, the deceased visited the house of Ravinder Singh *alias* Pahara at village Ram Garh Kullian and he also informed his wife that he was with Ravinder Singh *alias* Pahara accused also does not land us anywhere if Ravinder Singh *alias* Pahara accused had a hand in the commission of the crime. No motive for committing crime by Ravinder Singh *alias* Pahara has been alleged or proved on therecord. It is also not proved on the record that it was only Ravinder Singh *alias* Pahara who

was with Ashwani Kumar and the deceased and none else. Consumption of liquor by Ravinder Singh *alias* Pahara has been duly proved by stating that he is habitual drunker and he was taken by the police when he was under the influence of liquor. Further more, in the absence of any direct connection between Ravinder Singh *alias* Pahara and Pooja Sharma, and any other witness who had seen Ravinder Singh *alias* Pahara in the company of the deceased, it cannot be taken as an incriminating circumstance that it was Ravinder Singh *alias* Pahara who had participated in the commission of the crime. While going to the worst, even if it is believed that the deceased had made phone calls to his wife that he was along with Ravinder Singh *alias* Pahara and they had reached Jalandhar, the same cannot be taken as dying declaration as only that part of the statement which indicates the cause of his death can be taken as dying declaration under Section 32 of the Evidence Act. Therefore, this part of the statement made by her husband to Pooja Sharma (PW1) cannot be treated as dying declaration. Circumstantial evidence has come to the surface in order to establish her involvement in the commission of the crime. Admittedly, she was an employee of the deceased some times prior to the incident. Trial Court has recorded her conviction on the grounds that though she is married with one Mukhtiar Singh, yet she says that she is unmarried. But anything wrongly stated by the accused which un-concerns the offence should not tell up on the accused so as to condemn to the extent of holding her guilty for the commission of the crime. The circumstances that she got two passports Ex.P2 and Ex.P3 prepared by representing herself to be the wife of the deceased and mother of the deceased's son Ajay Kumar and that a pair of sandals and a lady purse were also found from the car of the deceased can hardly be treated as incriminating circumstances complete the chain particularly when the sandals so recovered from the accused could not be proved to be that of Lakhbir Kaur.

(35) We further observed that we are not moved by the character of Lakhbir Kaur which she was holding. Be that it may, she got prepared two passports by misrepresentation; she denied her marriage with Mukhtiar Singh but this circumstance does not fall within the parameters of circumstantial evidence to connect her with the crime. No amount of evidence has been led by the prosecution that Lakhbir Kaur accused had any relations with Ravinder Singh *alias* Pahara. In that situation, the complicity of the accused

Lakhbir Kaur in the commission of the crime is not probable. We may condemn the Investigating Agency for which it deserves for not conducting the investigation in the right perspective, yet we also cannot condemn Lakhbir Kaur without evidence on record. The documents proved by Lakhbir Kaur on the record rather go to show that she was in no way involved in the crime. A dispute was going on in an enquiry before Mandip Singh, DSP regarding arrears of salary of Rs. 2,18,000 payable to her by the deceased and the matter was being settled. However, on 11th November, 2003, Lakhbir Kaur accused got filed the enquiry on the plea that some compromise was anticipated. All this goes to show that she may still be in the hope getting some amount, but nothing could be derived by her after killing the course of payment.

(36) In the wake of aforesaid discussions, we accept the Criminal Appeal No. 398-DB of 2005 filed by Lakhbir Kaur accused and Criminal Appeal No. 478-DB of 2005 filed by Ravinder Singh *alias* Pahara accused, set aside the impugned judgment *qua* them and acquit them (Lakhbir Kaur and Ravinder Singh *alias* Pahara) of the charges. They are directed to be set at liberty forthwith, if not required in any other case.

(37) However, we dismiss the Criminal Appeal No. 420-DB of 2005 filed by Ashwani Kumar Sharma accused.

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**R.N.R.**

***Before M.M. Kmar and Arvind Kumar, JJ***

**BALDEV SINGH,—Petitioner**

***versus***

**STATE OF PUNJAB & OTHERS,—Respondents**

C.W.P. No. 1026 of 2005

5th July, 2007

***Constitution of India, 1950—Art. 226—Punjab State Agricultural Marketing Board (Class II) Service Rules, 1988—Rl.8—Petitioner appointed Assistant Secretary on ad hoc basis—Regularization of services—Petitioner charge-sheeted under Rl. 8***